



January 19, 2016

Sent Via Certified Mail, Return Receipt Requested:

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Sent Via U.S. Mail:

CT Corporation System
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RE: NOTICE OF VIOLATIONS AND INTENT TO FILE SUIT UNDER THE CLEAN WATER ACT

Dear South Mountain Oil Field Owner(s) and/or Operator(s):

We are writing on behalf of the Environmental Defense Center (“EDC”) regarding violations of the Clean Water Act (“CWA”), 33 U.S.C. § 1251 *et seq.*, at the South Mountain oil and gas field, located at 19242 South Mountain Road, Santa Paula, CA (“South Mountain” or “Facility”). The responsible owner(s) and/or operator(s) of the Facility include all of the addressees in this letter, collectively referred to as “California Resources Corporation” or “CRC.”

Specifically, this letter constitutes notice of EDC’s intent to sue CRC for its violations of Section 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and California’s General Permit for Storm Water Discharges Associated With Industrial Activities, National Pollutant Discharge Elimination System (“NPDES”) General Permit No. CAS000001, Water Quality Order No. 97-03-DWQ (“1997 Permit”), as renewed by Order No. 2015-0057-DWQ (“2015 Permit”). The 1997 Permit was in effect between 1997 and June 30, 2015, and the 2015 Permit went into effect on July 1, 2015. As explained below, the 2015 Permit maintains or makes more stringent the same requirements as the 1997 Permit. As appropriate, EDC refers to the 1997 and 2015 Permits in this letter collectively as the “General Permit.” As detailed in this Notice Letter, CRC is in ongoing violation of the General Permit and CWA, and its unlawful discharges of pollutants adversely impact the Santa Clara River and its tributaries, Calleguas Creek and its tributaries, and the Pacific Ocean.

This notice is provided pursuant to section 505(a) of the CWA, 33 U.S.C. § 1365(a), and its implementing regulations at 40 C.F.R. §§ 135.1–135.3. Unless CRC takes actions necessary to remedy the ongoing violations of the General Permit and CWA, EDC intends to file suit in U.S. District Court following expiration of the 60-day notice period, seeking injunctive relief and civil penalties, as well as fees and costs. Under the CWA, CRC is subject to penalties of up to \$37,500 per day per violation enumerated below. 40 C.F.R. § 19.4. If CRC has any information demonstrating that one or more of the violations alleged in this notice did not occur or are described incorrectly, please immediately provide this information to EDC.

I. Background

A. Environmental Defense Center

Founded in 1977, EDC is a non-profit 501(c)(3), public benefit corporation with more than 3,000 members, and works primarily in Ventura, Santa Barbara, and San Luis Obispo Counties. EDC's main office is located at 906 Garden Street, in Santa Barbara, California, 93101. EDC's Ventura County office is located at 111 West Topa Topa Street, in Ojai, California. EDC protects and enhances the local environment through education, advocacy, and legal action. Specifically, EDC focuses on clean water, the Santa Barbara Channel, open space and wildlife, and climate and energy.

EDC has members who reside near the Santa Clara River, Calleguas Creek, and the Pacific Ocean in Ventura County, and who regularly use these waters and surrounding areas for recreational activities, including swimming, hiking, kayaking, fishing, and surfing. As described below, the Facility has unlawfully and continuously discharged pollutants into Santa Clara River and its tributaries, and into Calleguas Creek and its tributaries, both of which in turn flow into the Pacific Ocean. These illegal discharges are due to CRC's failure to comply with the General Permit and CWA, and have impaired and will continue to impair EDC members' use and enjoyment of these water bodies. Thus, the interests of EDC's members have been, are being, and will continue to be adversely affected by CRC's failure to comply with the General Permit and CWA.

B. South Mountain's Owners and/or Operators

Information available to EDC indicates that South Mountain is owned and/or operated by the addressees to this letter. CRC has its corporate headquarters in Los Angeles, and owns and operates oil and gas facilities in Los Angeles and Ventura Counties, as well as the Central Valley.

CRC was created in 2014 when Occidental Petroleum Corporation ("OXY"), an international oil and gas exploration and production company headquartered in Houston, Texas, separated its California assets into an independent, publicly traded company. CRC is the state's largest natural gas producer, largest oil and gas producer on a gross-operated basis, and largest oil and gas mineral acreage holder with approximately 2.3 million acres. To the best of EDC's information and knowledge, prior to the creation of CRC, the South

Mountain oil field was operated by OXY subsidiary or subsidiaries including but not limited to Vintage Production California, LLC, and Vintage Petroleum, LLC. This Notice shall simply refer to CRC when describing the South Mountain's owners and/or operators, including for past actions taken by its corporate predecessors with Vintage. As explained herein, CRC is liable for violations of the General Permit and the CWA.

C. The Clean Water Act and General Permit

The objective of the CWA is to “restore and maintain the chemical, physical and biological integrity of the Nation’s waters.” 33 U.S.C. §§ 1251(a), 1311(b)(2)(A). To this end, the CWA prohibits the discharge of a pollutant from a point source into waters of the United States except as in compliance with other specified sections of the Act, including Section 402, which provides for NPDES permits. 33 U.S.C. §§ 1311(a), 1342. Section 402(p) establishes the framework for regulating pollutants in industrial storm water discharges under the NPDES program. 33 U.S.C. §1342(p).

In California, the EPA has delegated authority to issue NPDES permits to the State Water Resources Control Board (“State Board”). 33 U.S.C. § 1342(b), (d). In turn, the State Board has delegated the Regional Water Quality Control Board, Los Angeles Region (“Regional Board”), responsibility for the implementation and enforcement of the General Permit in Region 4, which includes Ventura County. In order to discharge storm water lawfully in California, industrial facility operators must enroll in and comply with the terms of the General Permit.

The 1997 Permit requires that dischargers meet all applicable provisions of Sections 301 and 402 of the CWA. These provisions require control of pollutant discharges using Best Management Practices (“BMPs”) that achieve either best available technology economically achievable (“BAT”) or best conventional pollutant control technology (“BCT”) to prevent or reduce pollutants.¹ 1997 Permit, Effluent Limitations B(3); 33 U.S.C. §§ 1311(b)(2)(A), (e).

¹ Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BCT for conventional pollutants, which include TSS, O&G, pH, BOD, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional, which must undergo BAT treatment prior to discharge. *Id.*; 40 C.F.R. § 401.15.

The 2015 Permit maintains this core statutory requirement to meet BAT/BCT standards. 2015 Permit, Effluent Limitations V(A). The 2015 Permit continues the requirement for all facility operators to develop and implement a Storm Water Pollution Prevention Plan (“SWPPP”) that includes BMPs. *Id.*, Section X. The 2015 Permit now requires operators to implement certain minimum BMPs, as well as advanced BMPs as necessary, to achieve compliance with the effluent and receiving water limitations of the 2015 Permit. *Id.* In addition, the 2015 Permit requires all facility operators to sample storm water discharges more frequently than the 1997 Permit, and to compare sample and analytical results with numeric action levels (“NALs”). *Id.*, Section XI. All facility operators are required to perform Exceedance Response Actions (“ERAs”) as appropriate whenever sampling indicates NAL exceedances. *Id.*, Section XII.

Both the 1997 Permit and the 2015 Permit require facility operators to: (1) submit a Notice of Intent (“NOI”) that certifies the type of activity or activities undertaken at the facility and commits the operator to comply with the terms and conditions of the permit; (2) eliminate unauthorized non-stormwater discharges; (3) develop and implement a SWPPP; (4) perform monitoring of storm water discharges and authorized non-stormwater discharges; and (5) file an Annual Report that summarizes the year’s industrial activities and compliance with the General Permit.

II. South Mountain and Associated Discharges of Pollutants

A. South Mountain Field Site Description

The Facility comprises approximately 5,757 acres, concentrated on the slopes and flanks of South Mountain, located within unincorporated Ventura County to the southeast of the City of Santa Paula. Oil development within the South Mountain field occurs on elevations ranging from 500 to 2,300 feet above sea level.

Under EPA regulations, oil and gas facilities must obtain storm water NPDES permit coverage when the facility has discharged a “reportable quantity” of a specified pollutant, including discharges of oil, or has contributed to a violation of a water quality standard. 40 C.F.R. § 122.26(c)(iii). The Facility has discharged crude oil and other pollutants to storm water in excess of reportable quantities. Accordingly, CRC was required to obtain CWA NPDES coverage.

CRC certified and submitted its NOI via the Stormwater Multiple Application and Report Tracking System ("SMARTS") website on June 9, 2015, and its site map and SWPPP (dated July 1, 2015) on August 12, 2015. The NOI identifies the Facility's Waste Discharge Identification ("WDID") number as 4 56I020995. According to its NOI, CRC has certified that the Facility's operations fall within SIC Code 1311, and the regulated activity is described as Crude Petroleum and Natural Gas ("Establishments primarily engaged in operating oil and gas field properties").²

According to data from the California Division of Oil, Gas & Geothermal Resources ("DOGGR"), 693 wells have been drilled within the Facility. DOGGR data also shows that there are six active water flood injection wells³ and four active water disposal injection wells⁴ operating within the boundaries of the South Mountain field.⁵

According to CRC's SWPPP, South Mountain encompasses two leases, the South Mountain lease and Saticoy lease.⁶ South Mountain is currently the second largest oil field in terms of production in Ventura County, with 741,528 bbl of oil

² Other potentially applicable SIC codes include: 1381 (drilling oil and gas wells) and 1382 (oil and gas field exploration services)

³ API numbers 11103166 (Termo Company); 11103453; 11103467; 11122248; 11122249; 11122250; 1122251

⁴ API numbers 11103286; 11103407; 11103688; 11103701

⁵ The South Mountain oil field is permitted by the County of Ventura under its local land use authority pursuant to Special Use Permit ("SUP") 22, and Conditional Use Permit ("CUP") 26, CUP, 123, CUP 133, and CUP 143. The SUP and CUPs have no well quantity restrictions and do not have an expiration date. Drilling of new wells or redrilling of existing wells requires issuance of a ministerial Zoning Clearance permit from the County. *See, e.g.*, Ventura County Planning Division Construction Demolition Zoning Clearance for four new wells (issued September 23, 2014).

⁶ CRC's SWPPP description of only two leases appears inconsistent with information in the DOGGR database. DOGGR's database lists numerous additional lease names at the South Mountain oil field in which CRC is listed as the operator including: Calco-Schieferle; Caldwell & Snyder; Casperson; Crane; Culbert; Harvey; Hyde Pinkerton; L. and B.; Lookout; Mark Richardson; Norcop B; Norm Richardson; Norm Richardson Heirs; Norman Richardson; Price; Richardson Community; Richardson Estate; Richardson Ranch B; Santa Paula; Santa Paula Fee; Schieferle Heirs; Sence; Snyder; South Mountain and Ojai; Stewart; Taylor; T-U Bridge Unit; T-U Deep Unit; T-U H.I. Richardson; T-U H.I. Richardson B; T-U Hyde; T-U Hyde-Pinkerton; T-U Mark Richardson; T-U Norcop; T-U Norman Richardson Heirs; T-U Richardson Ranch; T-U Richardson Ranch C; T-U Richardson-Earl; T-U Stine; T-U Stine B; T-U Taylor; T-U Van Lente; T-U Yale Richardson B; T-U Yale Richardson C; Willard; Yale Richardson; and Yale Richardson Two.

produced last year (as well as 1,256,754 bbl of water). DOGGR 2014 PRELIMINARY REPORT OF CALIFORNIA OIL AND GAS PRODUCTION STATISTICS, at p. 7.

Based on CRC's NOI, SWPPP, review and aerial photography, and EDC's information and belief, storm water is collected from the Facility through a diverse range of point sources dispersed throughout the field. The SWPPP identifies pollution point sources as including well pad sites, well cellars, oil production/tank batteries, equipment storage areas, chemical storage areas, compressors and machinery. Additional point sources not identified in the SWPPP include road drainage infrastructure, and erosion gullies and channels associated with roads and pads, and in-stream detention basins.

The most recent SWPPP prepared by CRC for the Facility on the SMARTS system is dated July 1, 2015. That SWPPP does not provide specific quantified information concerning the number of well pads and other industrial sites. Nor does it provide any specific or detailed information regarding the extent and mileage of the Facility's road system.⁷

B. South Mountain Pollutants

The EPA SECTION I: OIL AND GAS EXTRACTION FACILITIES FACT SHEET (December 2006), part of the EPA Industrial Fact Sheet Series, provides a summary of the permitting program, the types of facilities included in the sector (EPA has produced fact sheets for each of the 29 different industrial sectors regulated under its Multi-State General Permit ("MSGP") for Industrial Activities), a summary of typical pollutants associated with the sector, and types of storm water control measures (including BMPs) used to minimize the discharge of those pollutants. A portion of this Fact Sheet is reproduced as Table 1.

⁷ "Source" is defined under the 2015 Permit to include "[a]ny facility or building, road, or area that causes or contributes to pollutants in stormwater."

**TABLE 1: COMMON ACTIVITIES, POLLUTANT SOURCES,
AND ASSOCIATED POLLUTANTS
AT OIL AND GAS FACILITIES**

Activity	Pollutant Source	Pollutant
Construction of: Access roads Drill pads Mud/reserve pits Personnel quarters Surface impoundments Storage tanks Pipelines	Soil/dirt, leaking equipment, and vehicles	Total suspended solids (TSS), Total dissolved solids (TDS), oil and grease
Well drilling	Drilling fluid *, lubricants, mud, cuttings, and produced water	TSS, TDS, oil and grease, chemical oxygen demand (COD), chlorides, barium, naphthalene, benzene, lead, arsenic, fluoride
Well completion/stimulation	Fluids (used to control pressure in well), cement, residual oil, acids, surfactants, solvents, produced water, and sand	TSS, TDS, oil and grease, COD, acid, acetone, toluene, ethanol, exlenes
Production	Produced water, oil, waste sludge, tank bottoms, acids, oily debris, and emulsions	Chlorides, TDS, oil and grease, TSS, pH, benzene, phenanthrene, barium, arsenic, lead, antimony
Vehicle and equipment cleaning and repairing	Cleaning solvents, lubricants, and chemical additives	TSS, TDS, oil and grease, pH
Site closures	Residual muds and oily debris	TSS, TDS, oil and grease, pH
Vehicle fueling	Diesel fuel	TSS, TDS, oil and grease

* The potential contaminants to be found in drilling fluid varies from site to site, depending on the components of the fluid and any pollutants added due to use of the fluid. Storm water discharges that come into contact with used drilling fluids may include the following pollutants, among others: toluene, ethyl benzene, xylene, phenol, benzene, and phenanthrene. Used drilling fluids may also contain inorganic pollutants from additives or downhole exposure, such as arsenic, chromium, lead, aluminum, sulfur, and sulfate salts.

C. Receiving Waters: Santa Clara River and Calleguas Creek

Storm water runoff from the Facility drains to two receiving waters, the Santa Clara River and Calleguas Creek. All of the tributaries within South Mountain are intermittent stream courses adjoined by coastal sage scrub communities, including giant wild rye, sage, sugarbush, laurel sumac, toyon, coyote brush, California live oak, and California black walnut woodlands. Riparian habitat found within the tributary beds and their banks and channels include elderberry and willows. BASIN AND STREAM CROSSING MAINTENANCE CONDITIONS REQUIRED BY THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA CASE NO. CIV 178386. (Appendix E to July 1, 2013 SWPPP), at p. 2. These habitats support fish and wildlife including mammals (deer, bear, mountain lion, bobcat, coyote, rabbit, raccoon, ground squirrel); raptors (hawks, vultures, owls); songbirds (including least Bell's vireo); reptiles (western fence and horned lizard, snakes); amphibians (frogs and toads); and macroinvertebrates (crustaceans, insects, and other arthropods).

Runoff from the north slopes of the Facility drains northward into Reach 3 of the Santa Clara River. California Department of Fish and Wildlife ("DFW") has identified three primary tributary stream courses to the Santa Clara River on the north side of South Mountain: Willard Canyon, Morgan Canyon, and an unnamed tributary at the oil field main entrance. BASIN AND STREAM CROSSING MAINTENANCE CONDITIONS REQUIRED BY THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA CASE NO. CIV 178386. (Appendix E to July 1, 2013 SWPPP). CRC operates an oil spill containment basis within each of these drainages. Numerous unnamed tributaries to the Santa Clara River are also located on the north side of South Mountain.

The Santa Clara River is Southern California's last naturally flowing major river system, is a vital source of water for both municipal and agricultural uses, and in 2005 was listed as the 10th most endangered U.S. waterway.⁸ In addition to being the largest wild river remaining in Southern California, and one of only a few river systems in the region that has not been channelized by concrete, the Santa Clara River provides crucial aquatic ecosystem functions in the region, including groundwater recharge and riparian habitat. Numerous endangered

⁸ See Daryl Kelley, *Santa Clara River Listed as 10th Most Endangered Waterway*, L.A. Times, Apr. 15, 2005, <http://articles.latimes.com/2005/apr/13/local/me-endangered13>.

species exist within the watershed and its habitat, including the Santa Ana sucker, tidewater goby, unarmored three-spined stickleback, California red legged frog, arroyo toad, Southwestern willow flycatcher, least Bell's vireo, and the southern California steelhead.⁹

Runoff from the south slopes of the Facility drain southward into Fox Barranca, which in turn drains to Reach 6 of the Calleguas Creek. South Mountain July 1, 2015 SWPPP (Monitoring and Reporting Plan), at p. 17. Calleguas Creek is an approximately 343 square mile watershed, and encompasses several southeastern Ventura County drainages including Conejo Creek, and Arroyos Santa Rosa, Simi, and Los Posas. Most of the major urban areas, including Thousand Oaks, Simi Valley, and Moorpark, are located within the upper portion of the watershed, while agriculture is concentrated in the middle and lower portions of the watershed.

Calleguas Creek water quality is severely compromised in several portions of the watershed, and is listed under 303(d) for impairments of pesticides, DDT, PCBs, metals (including copper, mercury, nickel, zinc, and lead), trash, bacteria and fecal coliform, nutrients (including nitrate, nitrite, and nitrogen), ammonia, sulfates, selenium, TDS, sediment/TSS, toxicity, sediment toxicity, and boron.¹⁰ TMDLs have been established for nutrients; toxics (pesticides and PCBs); toxicity; metals; trash; nutrients; and salts).¹¹

South Mountain forms part of the watershed's northern boundary (along with the Santa Susana and Oak Ridge Mountains), while the Santa Monica Mountains and Simi Hills form the southern boundary. The Calleguas Creek watershed eventually drains into the Pacific Ocean through Mugu Lagoon.

Mugu Lagoon is the largest coastal wetland complex in southern California, yet has lost much of its habitat. Despite this degradation, Mugu Lagoon provides

⁹ The steelhead run on the Santa Clara River prior to 1940 is estimated to have had thousands of fish and to have been one of the largest steelhead runs in southern California. *See* report by Moore, Mark titled "An Assessment of the Impacts of the Proposed Improvements to the Vern Freeman Diversion on Anadromous Fishes of the Santa Clara River System, Ventura County, California" (1980).

¹⁰ See <http://www3.epa.gov/region9/water/watershed/measurew/calleguas/index.html>; http://www.waterboards.ca.gov/losangeles/water_issues/programs/regional_program/Water_Quality_and_Watersheds/calleguas_creek_watershed/summary.shtml.

¹¹ http://www.waterboards.ca.gov/losangeles/water_issues/programs/tmdl/tmdl_list.shtml

habitat for endangered species including light-footed clapper rail, California least tern, and Belding's savannah sparrow. Point Mugu is one of the few places in southern California where habitat restoration may provide room for inland plant and wildlife migration in response to sea level rise, as well as restoration opportunities for endangered species.¹²

D. Applicable Water Quality Standards

The Regional Board has identified beneficial uses of the Santa Clara River and Calleguas Creek and established water quality standards for them in the "Water Quality Control Plan – Los Angeles Region: Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties", generally referred to as the Basin Plan. See http://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/basin_plan_documentation.shtml. The Basin Plan identifies the "Beneficial Uses" of water bodies in the region. See Basin Plan, Table 2-1, available at http://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/electronics_documents/BeneficialUseTables.pdf.

The Basin Plan includes a narrative toxicity standard which states that "[a]ll waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in, human, plant, animal, or aquatic life." *Id.* at 3-16. The Basin Plan provides that "[w]aters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses." *Id.* at 3-16. The Basin Plan provides that "[t]he pH of bays or estuaries [or inland surface waters] shall not be depressed below 6.5 or raised above 8.5 as a result of waste discharges." *Id.* at 3-15. The Basin Plan provides that "[s]urface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use." *Id.* at 3-8. The Basin Plan provides that "[w]aters shall not contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses." *Id.* at 3-9. The Basin Plan provides that "[w]aters shall be free of coloration that causes nuisance or adversely affects beneficial uses." *Id.* The Basin Plan provides that "[w]aters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses." *Id.* at 3-17. The Basin Plan provides "[w]ater designated for use as Domestic or Municipal Supply (MUN) [such as the Santa Clara River and Calleguas Creek] shall not contain concentrations of

¹² See HISTORICAL ECOLOGY OF THE LOWER SANTA CLARA RIVER, VENTURA RIVER, AND OXNARD PLAIN: AN ANALYSIS OF TERRESTRIAL, RIVERINE, AND COASTAL HABITATS. San Francisco Estuary Institute (August 2011).

chemical constituents in excess of the limits specified in the following provisions of Title 22 of the California Code of Regulations which are incorporated by reference into this plan: Table 64431-A of Section 64431 (Inorganic Chemicals) and Table 64444-A of Section 64444 (Organic Chemicals). This incorporation by reference is prospective including future changes to the incorporated provisions as the changes take effect. (See Tables 3-8 and 3-9.)” *Id.* at 3-24.

E. Applicable Levels to Determine Compliance with BAT/BCT

The 1997 Permit requires all industrial facilities to sample and analyze storm water discharges for the following parameters: pH, total suspended solids (“TSS”), specific conductance (“SC”), and total organic carbon (“TOC”) or oil and grease (“O&G”). *See* 1997 Permit, § B(5)(c)(i); 2015 Permit, §§ XI(B)(6)(a), (b).

The EPA has published “benchmark” levels as numeric thresholds for helping to determine whether a facility discharging industrial storm water has implemented the requisite BAT and BCT mandated by the CWA. 2008 Multi-Sector General Permit (“MSGP”). These benchmarks represent pollutant concentrations at which a storm water discharge could potentially impair, or contribute to impairing, water quality, or affect human health from ingestion of water or fish. The following EPA benchmarks have been established for pollution parameters applicable to South Mountain: pH—6.0-9.0 s.u.; TSS—100 mg/L; SC—200 uhmos/cm; TOC—110 mg/L; O&G—15 mg/L; and iron—1.0 mg/L.

These benchmarks are reflected in the 2015 Permit in the form of Numeric Action Levels (“NALs”). The 2015 Permit incorporates annual NALs, which reflect the 2008 MSGP benchmark values, and instantaneous NALs, which are derived from a Water Board dataset. The following annual NALs have been established under the 2015 Permit: TSS—100 mg/L; O&G—15 mg/L; and iron—mg/L. The 2015 Permit also establishes the following instantaneous NALs: pH—6.0-9.0 s.u.; TSS—400 mg/L; and O&G—25 mg/L.

III. Alleged Violations of the Clean Water Act and the General Permit

The citizen suit provision of the CWA provides that “any citizen” may commence a suit “against any person,” including a corporation, “who is alleged to be in violation of an effluent standard or limitation under this chapter.” 33 U.S.C. § 1365(a)(1). The CWA in turn defines “effluent standard or limitation” to include “a permit or condition” issued under section 402. *Id.* § 1365(f)(6). Accordingly, a

citizen may commence a suit alleging violations of the General Permit. *See Natural Resource Defense Council v. Southwest Marine, Inc.*, 236 F.3d 985 (9th Cir. 2000) (storm water permit enforcement action where company was liable for discharges of “significant contributions of pollutants” and inadequate recordkeeping).

In the years since enrolling under the General Permit, CRC has failed to meet its obligations under the General Permit and CWA. As discussed in further detail below, CRC is in ongoing violation of the General Permit, and its violations span both the 1997 Permit and 2015 Permit. Specifically, CRC has repeatedly discharged storm water in violation of the General Permit’s effluent limitations requiring BAT/BCT; failed to develop an adequate monitoring and reporting program; and failed to develop, implement or update an adequate SWPPP to ensure development and implementation of BMPs that achieve BAT/BCT.

A. Discharges in Violation of the General Permit not Subjected to BAT/BCT

CRC has violated and continues to violate the terms and conditions of the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BMPs that meet BAT standards for toxic and nonconventional pollutants, and BCT standards for conventional pollutants.¹³ The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V(A).

In addition, Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III(B) of the 2015 Permit prohibit the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the 1997 Permit and Discharge Prohibition III(C) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

¹³ Toxic pollutants are listed at 40 C.F.R. § 401.15 and conventional pollutants are listed at 40 C.F.R. § 401.16.

Receiving Water Limitation C(1) of the 1997 Permit and Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that adversely impact human health or the environment. Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit also prohibit storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) of the 2015 Permit. As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

South Mountain has discharged and continues to discharge storm water with unacceptable levels of TSS, pH, and iron in violation of the General Permit. South Mountain's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

On November 30, 2012, the Facility observed tan and silty storm water discharged from the Wintz, Willard Canyon, and Main Gate discharge locations. These discharges violate the narrative standards set forth in the Basin Plan for discoloration (Basin Plan at 3-9) and turbidity (Basin Plan at 3-17). On March 21, 2011, the Facility measured storm water discharges with pH levels of 9.42 and 9.24 from the South Mountain and Willard Canyon discharge locations, respectively. On December 2, 2014, the Facility measured a storm water discharge with a pH level of 9.1 from the Willard Canyon discharge location. These discharges are in violation of the water quality standard for pH of 6.5 – 8.5 set forth in the Basin Plan. These observations have thus violated narrative and numeric water quality standards established in the Basin Plan and have thus violated Discharge Prohibition A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and

C(2) of the 1997 Permit; Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the General Permit.

TABLE 3: SAMPLING DEMONSTRATING EXCEEDANCES OF EPA BENCHMARKS AND APPLICABLE NALS

DATE	PARAMETER	OBSERVED CONCENTRATION	EPA BENCHMARK VALUE / NAL	DISCHARGE LOCATION (AS IDENTIFIED BY OPERATOR)
3/21/11	pH	9.42 SU	6-9 SU	South Mountain
3/21/11	pH	9.24 SU	6-9 SU	Willard Canyon
1/21/12	TSS	160 mg/L	100 mg/L	Taylor Ranch
1/21/12	TSS	200 mg/L	100 mg/L	South Mountain
1/21/12	TSS	74,800 mg/L	100 mg/L	Willard Canyon
1/21/12	TSS	5,800 mg/L	100 mg/L	Wentz Ranch
11/30/12	TSS	94,400 mg/L	100 mg/L	South Mountain
11/30/12	TSS	13,300 mg/L	100 mg/L	Willard Canyon
11/30/12	TSS	6,180 mg/L	100 mg/L	Wentz Canyon
2/28/14	TSS	180 mg/L	100 mg/L	Site G
2/28/14	TSS	300 mg/L	100 mg/L	Site F
2/28/14	TSS	3,950 mg/L	100 mg/L	Empty steel tanks
2/28/14	TSS	690 mg/L	100 mg/L	Richardson Ranch
2/28/14	Fe	14 mg/L	1 mg/L	Willard Canyon
2/28/14	TSS	3,780 mg/L	100 mg/L	Willard Canyon

2/28/14	Fe	4.9 mg/L	1 mg/L	Wentz Ranch
2/28/14	TSS	5,660 mg/L	100 mg/L	Wentz Ranch
12/2/14	Fe	2 mg/L	1 mg/L	Richardson Ranch
12/2/14	TSS	430 mg/L	100 mg/L	Richardson Ranch
12/2/14	TSS	9,360 mg/L	100 mg/L	Wentz Ranch
12/2/14	Fe	2.4 mg/L	1 mg/L	Willard Canyon
12/2/14	pH	9.1 SU	6-9 SU	Willard Canyon
12/2/14	TSS	2,070 mg/L	100 mg/L	Willard Canyon
12/2/14	TSS	480 mg/L	100 mg/L	South Mountain Water Flood
12/2/14	TSS	5,470 mg/L	100 mg/L	Empty steel tanks
12/2/14	TSS	1,150 mg/L	100 mg/L	Site G
12/2/14	TSS	900 mg/L	100 mg/L	Site F
12/12/14	Fe	3.5 mg/L	1 mg/L	Wentz Ranch
12/12/14	TSS	5,840 mg/L	100 mg/L	Wentz Ranch
12/12/14	TSS	2,370 mg/L	100 mg/L	Willard Canyon
12/12/14	TSS	180 mg/L	100 mg/L	Empty steel tanks

The information in the above tables reflects data gathered from South Mountain's self-monitoring during the 2010-2011, 2011-2012, 2012-2013, and 2014-2015 wet seasons. EDC alleges that during each of those wet seasons and continuing through today, South Mountain has discharged storm water contaminated with pollutants at levels that exceed one or more applicable EPA benchmark values or NALs. Information available to EDC, including CRC sampling data exhibiting consistent exceedances of EPA Benchmarks and NALs, demonstrates that CRC has failed and continues to fail to develop and/or implement BMPs at the Facility that achieve compliance with BAT/BCT standards. South Mountain was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. Thus, South

Mountain is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the numbers listed in the tables above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit. EDC alleges that such violations also have occurred and will occur on other rain dates, including every significant rain event that has occurred since January 19, 2011, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which EDC alleges that South Mountain has discharged storm water containing impermissible levels of TSS, pH, and iron in violation of Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; and Effluent Limitation V(A), Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit.¹⁴

These unlawful discharges from the Facility are ongoing. Every day that CRC does not implement BAT/BCT is a violation of Effluent Limitation B(3) of the General Permit or Effluent Limitation V(A) of the 2015 Permit and is thus a separate and distinct violation of the General Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a). CRC is subject to civil penalties for all violations of the CWA occurring since January 19, 2011.

EDC is aware that CRC asserts that it has been exempted from reporting limits for TSS, based on its claim that TSS has been demonstrated to be a “natural background” pollutant. The 2015 Permit includes “Natural Background Pollutant Source Demonstration” as a category of “Exceedance Response Actions (“ERAs”). 2015 Permit, § XII(D)(2)(c). In order to qualify as an ERA under this category, the discharger must meet nine requirements, including the fundamental requirement to show that the pollutant exceedance (in this case, TSS) is “attributable *solely* to the presence of the pollutant in the natural background that has not been disturbed by industrial activities.” CRC has not made this demonstration, and accordingly is not

¹⁴ The rain dates are all the days when 0.1” or more of rain fell as measured by a weather station located near Briggs Road and Highway 126 in Santa Paula, California, approximately 5 miles away from the Facility. *See* http://www.ipm.ucdavis.edu/calludt.cgi/WXDESCRIPTION?STN=Santa_Paula.A. (Last accessed on January 19, 2016). The rain dates on the attached table are when a daily average of 0.1” or more rain was observed.

exempt from TSS effluent limitation requirements under the General Permit.

CRC already has an extensive history of unsuccessful attempts to justify significant TSS exceedances at the South Mountain oil field as “background.” For example, in response to an August 10, 2010 Regional Board letter directing CRC to implement effective BMPs in order to address excessive TSS and specific conductance levels, CRC responded on September 3, 2010 that TSS exceedances were due to the predominantly mountainous terrain and landslides. The Regional Board did not accept this justification, and sent a benchmark exceedance letter on June 28, 2012. On November 15, 2012, Regional Board staff inspected the facility, and issued an associated Notice of Violation letter on December 12, 2012. In that NOV, Regional Board staff specifically addressed and rejected CRC’s attempt to justify its TSS exceedances as solely caused by background conditions:

“Staff realizes that the majority of the site’s total area (5,757 acres) is undeveloped natural land and most of the runoff is from canyon outfalls. Staff also realizes that containing the runoff from the entire 5,757 acres is not feasible. However, per the SWPPP, the permittee is operating in 57 acres. The permittee is responsible for runoff from these disturbed areas. Staff observed dirt roads leading to the drilling rigs and the areas around the rigs had exposed soil. These disturbed areas have the potential to contribute to the sediment runoff. Staff recommends implementation of BMPs such as chevrons, a series of detention basins, or other alternative BMPs in key areas of the 57 acres of the industrial operation to minimize the impact of these areas to water pollutants”

It is undisputed that best management practices significantly reduce the amount of erosion and sediment from oil and gas activities. *See, e.g.,* U.S. Department of the Interior and U.S. Department of Agriculture, SURFACE OPERATING STANDARDS AND GUIDELINES FOR OIL AND GAS EXPLORATION AND DEVELOPMENT (GOLD BOOK) (4th ed. 2006). Rather than seeking unjustified exemptions from the General Permit, CRC should instead invest the time and resources to adequately manage the quantity and quality of storm water pollutant discharges from its industrial activity at South Mountain, including the Facility’s extensive road network.

B. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program for the Facility

The 1997 Permit requires facility operators to develop and implement an adequate Monitoring and Reporting Program before industrial activities begin at a facility. *See* 1997 Permit, § B(1). The 2015 Permit includes similar monitoring and reporting requirements. *See* 2015 Permit, § XI. The primary objective of the Monitoring and Reporting Program is to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the General Permit's discharge prohibitions, effluent limitations, and receiving water limitations. An adequate Monitoring and Reporting Program therefore ensures that BMPs are effectively reducing and/or eliminating pollutants at the facility, and is evaluated and revised whenever appropriate to ensure compliance with the General Permit.

Sections B(3) - B(16) of the 1997 Permit set forth the monitoring and reporting requirements. As part of the Monitoring Program, all facility operators must conduct visual observations of storm water discharges and authorized non-storm water discharges, and collect and analyze samples of storm water discharges. As part of the Reporting Program, all facility operators must timely submit an Annual Report for each reporting year. The monitoring and reporting requirements of the 2015 Permit are substantially similar to those in the 1997 Permit, and in several instances more stringent.

i. Failure to Conduct Sampling and Analysis

The 1997 Permit requires dischargers to collect storm water samples during the first hour of discharge from the first storm event of the wet season, and at least one other storm event during the wet season, from all storm water discharge locations at a facility. *See* 1997 Permit, § B(5). The 2015 Permit now mandates that facility operators sample *four* (rather than two) storm water discharges from all discharge locations over the course of the reporting year. *See* 2015 Permit, §§ XI(B)(2), (3). Storm water discharges trigger the sampling requirement under the 1997 Permit when they occur during facility operating hours and are preceded by at least three working days without storm water discharge. *See* 1997 Permit, § B(5)(b). The 2015 Permit broadens this qualifying storm event definition by requiring that the storm water discharges be preceded by 48 hours without discharge from any drainage area in order to trigger the sampling requirement. *See* 2015 Permit, § XI(B)(1)(b). A sample must be collected from each discharge point at the facility, and in the event that an operator fails to collect samples from the

first storm event, the operators must still collect samples from two other storm events and “shall explain in the Annual Report why the first storm event was not sampled.” *See* 1997 Permit, § B(5)(a). The Facility has repeatedly violated these monitoring requirements.

During the 2011-2012, 2012-2013, 2013-2014, and 2014-2015 wet seasons, the Facility only sampled from one storm event, which South Mountain claimed was the first storm event of the wet season, and failed to collect samples from a second storm event. In the explanations for these failures to sample, South Mountain repeatedly claimed that no qualifying storm events occurred during the reporting period, or that no storms generated sufficient flow for sampling. However, as evidenced by the attached rainfall data in Attachment A there were numerous sampling opportunities during these reporting periods for South Mountain to conduct the required sampling and analysis.

In addition, on information and belief, EDC alleges that South Mountain has continually failed to monitor storm water discharges from a number of discharge locations at the Facility. These locations include additional point sources associated with road drainage infrastructure, erosion gullies and channels associated with roads and pads, and in-stream detention basins.

The Facility’s failure to conduct sampling and monitoring as required by the General Permit demonstrates that it has failed to develop, implement, and/or revise a Monitoring and Reporting Program that complies with the requirements of Section B and Provision E(3) of the 1997 Permit, Section XI of the 2015 Permit, and the CWA. CRC is in ongoing violation of the General Permit’s Monitoring and Reporting Program requirements and is subject to civil penalties for all violations of the CWA occurring since January 19, 2011.

ii. Failure to Conduct Visual Observations

Section B of the 1997 Permit describes the visual monitoring requirements for storm water discharges. Facilities are required to make monthly visual observations of storm water discharges (Section B(4)). Section B(7) requires that the visual observations must represent the “quality and quantity of the facility’s storm water discharges from the storm event.” The requirement to make monthly visual observations is continued in Section XI(A) of the 2015 Permit.

On information and belief, EDC alleges that South Mountain failed to

conduct monthly visual observations of storm water discharges at the Facility during the majority of the past five wet seasons in accordance with the requirements of the General Permit. EDC alleges the following specific failures:

- 2010-2011 wet season – failure to conduct any monthly visual observations. At a minimum, visual observations should have been conducted on March 21, 2011, when the Facility collected storm water samples from three discharge locations.
- 2011-2012 wet season – failure to conduct any monthly visual observations. The Facility's explanation that there were no discharges is insufficient. Indeed, the Facility collected four storm water samples on January 21, 2012. Further, Attachment A shows rain events during several months of the 2011-2012 wet season where discharges were likely.
- 2012-2013 wet season – failure to conduct monthly visual observations for all months except November. Attachment A shows rain events during several months of the 2012-2013 wet season where discharges were likely.
- 2013-2014 wet season - failure to conduct monthly visual observations for all months except February. Attachment A shows rain events during several months of the 2013-2014 wet season where discharges were likely.
- 2014-2015 wet season – failure to conduct monthly visual observations for all months, notwithstanding that the Facility collected a number of storm water samples during December 2014. Further, Attachment A shows rain events during several months of the 2014-2015 wet season where discharges were likely.

On information and belief, EDC alleges that South Mountain failed to properly record its visual observations of storm water discharges on December 2, 2014. On this date, South Mountain conducted observations of storm water discharges and did not report observing *any* pollutants. However, South Mountain's storm water sampling results for these dates indicate levels of TSS well above the benchmark value and average NAL of 100 mg/L (as well as the instantaneous NAL of 400 mg/L) – levels at which EDC alleges that South Mountain should be observing the presence of cloudiness or discoloration in its storm water discharges. These discharges contained TSS concentrations of 9,360 mg/L, 2,070 mg/L, 5,470 mg/L, 1,150 mg/L, and 900 mg/L. EDC alleges that it would be impossible for waters with TSS concentrations in this range to be free of cloudiness or discoloration.

The above violations are ongoing. Consistent with the five-year statute of

limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, CRC is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since January 19, 2011.

iii. Failure to Analyze for Pollutants That May be Present in Significant Quantities

Under the 1997 Permit, facilities must analyze storm water samples for "toxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." 1997 Permit, Section B(5)(c)(ii). Under the 2015 Permit, facilities must analyze storm water samples for "[a]dditional parameters identified by the Discharger on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment." 2015 Permit, Section XI(B)(6)(c). EPA has identified numerous pollutants that are expected to be discharged in significant amounts from oil and gas facilities, including but not limited to total petroleum hydrocarbons, chemical oxygen demand, chlorides, barium, naphthalene, phenanthrene, benzene, lead, arsenic, fluoride, acetone, toluene, ethanol xylenes, barium, and antimony. *See Table 1.*

Moreover, available evidence strongly indicates that South Mountain is discharging significant quantities of toxic chemicals, including metals and petroleum-based pollutants, in its storm water. In a recent study of northern Ventura County coastal watersheds impacted by CRC's Rincon and San Miguel to oil fields (also referred to as "Rincon Grubb"), which are similar facilities to South Mountain, researchers found that storm water samples had high concentrations of total suspended and dissolved solids containing high concentrations of metals, including aluminum, arsenic, barium, lead, and zinc, as well as high concentration of PAHs, including naphthalene and oil and grease. Maximum concentrations above CTR criteria were detected in water samples for toxics including chrysene, antimony, copper, mercury, and nickel.¹⁵

In addition, during the 2013-2014 and 2014-2015 wet seasons, South Mountain analyzed its storm water discharges for iron. The levels of iron frequently exceeded the benchmark/NAL of 1.0 mg/L. However, during the

¹⁵ Blue Tomorrow and Dr. Arturo Keller. NORTHERN VENTURA COUNTY COASTAL WATERSHED PROJECT AND ASSESSMENT (2014).

previous wet seasons, South Mountain failed to analyze all of its storm water discharges for iron.

CRC has failed to monitor for the above-mentioned pollutants in violation of the General Permit. CRC is in ongoing violation of the General Permit's Monitoring and Reporting Program requirements and is subject to civil penalties for all violations of the CWA occurring since January 19, 2011.

iv. Failure to Submit Accurate and Complete Annual Reports

Section B(14) of the 1997 Permit requires operators to submit an Annual Report to the Regional Board by July 1 of each year. The 1997 Permit, in relevant part, requires that the Annual Report include an Annual Comprehensive Site Compliance Evaluation Report ("ACSCE Report"). As part of the ACSCE Report, the facility operator must review and evaluate all of the BMPs to determine whether they are adequate or whether SWPPP revisions are needed. The Annual Report must be signed and certified by a duly authorized representative, under penalty of law that the information submitted is true, accurate, and complete to the best of his or her knowledge. The 2015 Permit now requires operators to conduct an Annual Comprehensive Facility Compliance Evaluation ("Annual Evaluation") that evaluates the effectiveness of current BMPs and the need for additional BMPs based on visual observations and sampling and analysis results. *See* 2015 Permit, § XV.

Information available to EDC indicates that CRC has consistently failed to comply with Section B(14) of the 1997 Permit, and Section XV of the 2015 Permit. None of the CRC Facility's ACSCE Reports provide an explanation of the CRC Facility's failure to take steps to reduce or prevent high levels of pollutants observed in the Facility's storm water discharges. *See* 1997 Permit Receiving Water Limitation C(3) and C(4) (requiring facility operators to submit a report to the Regional Board describing current and additional BMPs necessary to prevent or reduce pollutants causing or contributing to an exceedance of water quality standards); *see also* 2015 Permit § X(B)(1)(b). These examples of failures to assess the Facility's BMPs and respond to inadequacies in the ACSCE Reports negates a key component of the evaluation process required in self-monitoring programs such as the General Permit. Instead, CRC has consistently disregarded these failures to comply with the General Permit by simply checking the boxes in the ACSCE Report indicating that CRC certifies compliance with the General

Permit's requirements. By providing erroneous information, CRC has failed to properly respond to EPA benchmark and water quality standard exceedances, in violation of the General Permit.

EDC puts CRC on notice that its failures to submit accurate and complete Annual Reports are violations of Section B(14) of the 1997 Permit, Receiving Water Limitations C(3) and C(4) of the 1997 Permit, and the CWA. CRC is in ongoing violation of Section XV of the 2015 Permit every day the Facility operates without evaluating the effectiveness of BMPs and the need for additional BMPs. These violations are ongoing. Each of these violations is a separate and distinct violation of the General Permit and the CWA. CRC is subject to civil penalties for all violations of the CWA occurring since January 19, 2011.

C. Failure to Develop, Implement, and/or Revise an Adequate Storm Water Pollution Prevention Plan

Under the General Permit, the State Board has designated the SWPPP as the cornerstone of compliance with NPDES requirements for storm water discharges from industrial facilities, and ensuring that operators meet effluent and receiving water limitations. Section A(1) and Provision E(2) of the 1997 Permit require dischargers to develop and implement a SWPPP prior to beginning industrial activities that meet all of the requirements of the 1997 Permit. The objective of the SWPPP requirement is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-stormwater discharges from the facility, and to implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-stormwater discharges. *See* 1997 Permit § A(2); 2015 Permit § X(C). These BMPs must achieve compliance with the General Permit's effluent limitations and receiving water limitations. To ensure compliance with the General Permit, the SWPPP must be evaluated and revised as necessary. 1997 Permit §§ A(9), (10); 2015 Permit § X(B). Failure to develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a violation of the General Permit. 2015 Permit Factsheet § I(1).

Sections A(3)-A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a pollution prevention team; a site map; a list of significant materials handled and stored at the site; a description of potential pollutant sources; an assessment of potential pollutant sources; and a description of the BMPs to be implemented at the facility

that will reduce or prevent pollutants in storm water discharges and authorized non-stormwater discharges, including structural BMPs where non-structural BMPs are not effective. Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP requirements as the 1997 Permit, except that all dischargers are now required to develop and implement a set of minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT, which serve as the basis for compliance with the 2015 Permit's technology-based effluent limitations and receiving water limitations. *See* 2015 Permit § X(H). The 2015 Permit further requires a more comprehensive assessment of potential pollutant sources than the 1997 Permit; more specific BMP descriptions; and an additional BMP summary table identifying each identified area of industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented. *See* 2015 Permit §§ X(G)(2), (4), (5).

The 2015 Permit requires dischargers to implement and maintain, to the extent feasible, all of the following minimum BMPs in order to reduce or prevent pollutants in industrial storm water discharges: good housekeeping, preventive maintenance, spill and leak prevention and response, material handling and waste management, erosion and sediment controls, an employee training program, and quality assurance and record keeping. *See* 2015 Permit, § X(H)(1). Failure to implement all of these minimum BMPs is a violation of the 2015 Permit. *See* 2015 Permit Fact Sheet § I(2)(o). The 2015 Permit further requires dischargers to implement and maintain, to the extent feasible, any one or more of the following advanced BMPs necessary to reduce or prevent discharges of pollutants in industrial storm water discharges: exposure minimization BMPs, storm water containment and discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. *See* 2015 Permit, § X(H)(2). Failure to implement advanced BMPs as necessary to achieve compliance with either technology or water quality standards is a violation of the 2015 Permit. *Id.* The 2015 Permit also requires that the SWPPP include BMP Descriptions and a BMP Summary Table. *See* 2015 Permit § X(H)(4), (5).

Despite these clear BMP requirements, CRC has been conducting and continues to conduct industrial operations at the Facility with an inadequately developed, implemented, and/or revised SWPPP.

These inadequacies include, but are not limited to a failure to accurately and fully identify potential pollutant sources, which preclude the identification of adequate BMPs. For example, the SWPPP fails to provide basic information, such

as a simple quantification of the number and size of well pads and other industrial areas. In addition, the SWPPP does not identify the Facility's road network as a pollutant source.

CRC has failed to develop effective and comprehensive BMPs under the terms of the 2015 Permit. CRC's 2015 SWPPP describes only five BMPs, which fail to address a variety of minimum BMPs as required by the 2015 Permit. The 2015 SWPPP further maintains that no additional advanced BMPs are required, which is unlikely given the ongoing presence of high levels of pollutants in the Facility's storm water discharges. The 2015 SWPPP also fails to: (1) include the required BMP Descriptions, (2) identify the pollutants that each BMP is designed to reduce or prevent, and (3) justify each minimum and advanced BMP not being implemented, as required by the 2015 Permit. *See* 2015 Permit §§ X(H)(4)(a)(i), (b).

Most importantly, the Facility's storm water samples and discharge observations have consistently greatly exceeded EPA benchmarks, NALs, and water quality standards, demonstrating the failure of its BMPs to reduce or prevent pollutants associated with industrial activities in the Facility's discharges. Despite these exceedances, CRC has failed to sufficiently update the Facility's SWPPP. South Mountain's SWPPP has therefore never achieved the General Permit's objective to identify and implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-stormwater discharges.

EDC puts CRC on notice that it violates the General Permit and the CWA every day that South Mountain operates with an inadequately developed, implemented, and/or revised SWPPP. These violations are ongoing, and EDC will include additional violations as information and data become available. CRC is subject to civil penalties for all violations of the CWA occurring since January 19, 2011.

IV. Persons Responsible for the Violations

EDC puts each of the owners and/or operators of the Facility identified above on notice that they are the entities and/or persons responsible for the violations described above. If additional entities and/or persons are subsequently identified as also being responsible for the violations set forth above, EDC puts the owners and/or operators of the Facility on notice that it intends to include those

identified persons in this action.

V. Name and Address of Noticing Party

The name, address, and telephone number of EDC are as follows:

Lee Heller
President, Board of Directors
Environmental Defense Center
906 Garden Street
Santa Barbara, CA 93101
(805) 963-1622

VI. Counsel

EDC has retained legal counsel to represent it in this matter. Please direct all communications to:

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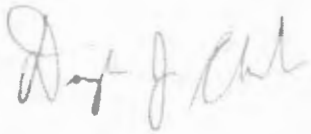
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VII. Relief Sought

As detailed in this Notice of Intent to Sue sent to CRC, in accordance with requirements of the CWA, CRC is in violation of multiple requirements of the General Permit, including exceedances of receiving water limitations and effluent limitations, monitoring and reporting violations, and SWPPP violations. Section 309 of the CWA, 33 U.S.C. § 1319(d), as adjusted by 40 C.F.R. § 19.4, provides for penalties of up to \$37,500 per day per violation. In addition to civil penalties, EDC will seek injunctive relief to prevent further violations of the CWA and General Permit pursuant to CWA sections 505(a) and (d), 33 U.S.C. § 1365(a), (d). EDC will also seek to recover its costs associated with this action, including attorneys' fees and experts' fees.

EDC believes that this Notice of Intent to Sue sufficiently states grounds for filing suit under the CWA. We intend to file a citizen suit under section 505(a) of the CWA against CRC and its agents for the above-referenced violations upon the expiration of the 60-day notice period. During the 60-day notice period, however, we are willing to discuss effective remedies for the violations alleged in this letter. If you wish to pursue such discussions in the absence of litigation, we respectfully request that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period, as we do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Douglas J. Chermak
Lozeau Drury LLP



Brian Segee, Senior Attorney
Environmental Defense Center



Michael R. Lozeau
Lozeau Drury LLP

SERVICE LIST

Via Certified Mail

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ATTACHMENT A **Rain Dates, South Mountain, Santa Paula, Ventura County, California**

2/15/2011	4/13/2012	2/28/2014
2/16/2011	8/1/2012	3/1/2014
2/18/2011	11/17/2012	10/31/2014
2/25/2011	11/28/2012	11/1/2014
3/2/2011	11/29/2012	12/2/2014
3/19/2011	11/30/2012	12/3/2014
3/20/2011	12/2/2012	12/12/2014
3/21/2011	12/12/2012	12/16/2014
3/23/2011	12/18/2012	12/17/2014
3/24/2011	12/22/2012	1/9/2015
3/25/2011	12/23/2012	1/10/2015
5/9/2011	12/24/2012	1/11/2015
5/17/2011	12/26/2012	2/7/2015
10/5/2011	12/29/2012	2/22/2015
11/6/2011	1/24/2013	3/1/2015
11/11/2011	1/25/2013	4/7/2015
11/12/2011	1/26/2013	5/14/2015
11/20/2011	2/19/2013	5/15/2015
12/12/2011	3/7/2013	10/17/2015
1/21/2012	3/8/2013	12/13/2015
1/23/2012	5/6/2013	12/19/2015
3/17/2012	11/20/2013	12/25/2015
3/25/2012	11/21/2013	12/28/2015
3/31/2012	12/7/2013	12/29/2015
4/10/2012	2/6/2014	1/5/2016
4/11/2012	2/26/2014	
4/12/2012	2/27/2014	